

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

JASON HOLLOWAY

PETITIONER

V.

NO. 1:16-CV-55-DMB-DAS

STATE OF MISSISSIPPI

RESPONDENT

ORDER DISMISSING CASE

On April 4, 2016, Jason Holloway, proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Doc. #1. On July 1, 2016, the State of Mississippi filed a motion to dismiss Holloway’s petition for failure to exhaust, state a claim, or meet the statute of limitations. Doc. #7. On July 18, 2016, Holloway filed a “Motion to Withdraw and Reply to Motion to Dismiss,” seeking dismissal of his petition to present additional claims in state court. Doc. #8. Though receiving notice of Holloway’s motion, the State has filed no response or opposition, and the time within which it could have done so has long passed.

“Motions for voluntary dismissal generally ‘should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.’” *Test Masters Educ. Servs., Inc. v. Robin Singh Educ. Servs., Inc.*, 799 F.3d 437, 448 (5th Cir. 2015) (quoting *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002)). Because the State has not opposed Holloway’s motion and thus failed to identify any legal prejudice it will suffer if Holloway’s motion is granted, the Court finds that granting Holloway’s motion will pose no plain legal prejudice to the State.¹

Accordingly, Holloway’s motion [8] is **GRANTED**; the State of Mississippi’s motion to dismiss [7] is **DENIED as moot**; and this case is **DISMISSED without prejudice**.

¹ See *Payne v. Rader*, No. CIV.A. 11-2767, 2012 WL 214554, at *1 (E.D. La. Jan. 24, 2012) (applying *Elbaor* to motion for voluntary dismissal of habeas petition where respondent only filed response to petition).

SO ORDERED, this 21st day of February, 2017.

/s/ Debra M. Brown
UNITED STATES DISTRICT JUDGE